

### REMARKS

Claims 57-67 and 69-72 are now presented for examination. Claims 58 and 65-67 have been amended to define more clearly what Applicants regard as their invention. Claim 68 has been canceled without prejudice or disclaimer of subject matter. Claims 69-72 have been added to assure Applicants of a full measure of protection of the scope to which they deem themselves entitled. Claims 57, 58, 60, 63-66, 71, and 72 are independent.

Applicants note with appreciation the allowance of Claims 60-62 and the indication that Claim 58 would be allowable if rewritten so as not to depend from a rejected claim, and with no change in scope. Since Claim 58 has been so rewritten, that claim is now believed to be in condition for allowance.

At paragraph 6 of the Office Action, the Examiner states that the "PCT document cited by applicant but not considered could not be retrieved due to what appears to be an incorrect document number." The PCT document in question is WO 93/18182, which was erroneously cited as WO 93/1818 in the Information Disclosure Statement filed on January 28, 2002. Applicants are submitting herewith a Form PTO-1449 in which WO 93/18182 is properly cited. The Examiner is respectfully requested to indicate that this document has been considered by initialing the attached Form PTO-1449. While no fee is believed to be due, please charge any fee that may be required in connection herewith to Deposit Account 06-1205.

Claims 65-67 were rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for lacking method steps. These claims have been carefully reviewed and amended as deemed necessary to ensure that they conform fully to the requirements of

Section 112, second paragraph, with special attention to the points raised in the Office Action. In particular, these claims have been amended to recite a computer-readable medium having stored therein computer executable code which, when executed, performs a method of operating a diagnostic microbiological testing apparatus. It is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

Claims 57, 59, and 63-67 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 5,340,747 to Eden.

Claim 57 is directed to a microbiological testing apparatus, having an incubation chamber. The chamber includes a carousel assembly, an enclosure, a drive system, a heating unit, and a temperature controller. The carousel assembly is adapted to mount a plurality of test panels each having a plurality of wells for receiving a test inoculum fluid for producing a reaction. The enclosure surrounds the carousel assembly and prevents intrusion of ambient light into the incubation chamber, and has a door for providing access to the carousel assembly. The drive system continuously rotates the carousel assembly to directly position the test panels for testing by the diagnostic microbiological testing apparatus. The heating unit heats the incubation chamber, and the temperature controller controls the heating unit to maintain the temperature of the incubation chamber within a predetermined temperature range.

Notably, in Claim 57, the carousel is continuously rotated by the drive system to directly position the test panels for testing. As explained in further detail below, nothing in Eden would teach or suggest these features.

Eden, as understood by Applicants, relates to a diagnostic microbiological testing apparatus and method. Fig. 2 of Eden shows an apparatus 10 which includes a plurality of test trays 11 contained within a carousel 14. The carousel 14 is a rotary table rotated by an actuating and indexing mechanism 16. The carousel 14 is intermittently and sequentially rotated to place one of the test trays 11 proximately to a detection area, but not directly into the detection area. After the rotation stops, a reciprocating arm (not the carousel), directly positions the test tray into and out of the detection area 18. (See col. 4, line 66, to col. 15, line 12, and col. 7, lines 10-18 of Eden.)

Nothing has been found in Eden, however, that teaches or suggests continuously rotating a carousel, or that the rotation is used to directly position the panel for testing, as recited in Claim 57. Accordingly, Claim 57 is believed to be clearly allowable over Eden.

Independent Claims 63-65 each include similar features of continuously rotating a carousel, and that the rotation is used to directly position the panel for testing, as discussed above in connection with Claim 57. Accordingly, Claims 63-65 are believed to be patentable for at least the same reasons as discussed above in connection with Claim 57.

Claim 66 is directed to a computer-readable medium having stored therein computer executable code which, when executed, performs a method for operating a diagnostic microbiological testing apparatus. A carousel of the testing apparatus, on which are mounted a test panel and a normalizer panel, is rotated past a light source and a light detection unit of the testing apparatus at a predetermined angular velocity. The test panel includes a plurality of wells for receiving a inoculum fluid comprising a reagent and a microbiological test sample for producing a test reaction, and the normalizer panel

includes a plurality of normalization wells. The light detection unit detects the light emitted from, or absorbed by, one or more of the normalization wells of the normalizer panel, and the light emitted from, or absorbed by, one or more of the wells of the test panel due to the test reaction. The detected test panel light is normalized using the detected normalizer panel light.

In particular, Eden discusses (at column 3, lines 51-62) detecting the presence of a fluorescence emitting reaction (FER) resulting from the interaction of fluorescence emitting agents (FEA) and a sample for detection, susceptibility, and identification testing. The apparatus includes a test tray which has a plurality of reaction chambers contained in the FEA, which react with a predetermined microbe in the sample.

Nothing has been found in Eden that teaches or suggests using a normalizer panel as recited in Claim 66, or the steps of detecting the light emitted from, or absorbed by, one or more of the normalization wells of a normalizer panel, and the light emitted from, or absorbed by, one or more of the wells of a test panel due to a test reaction, and normalizing the detected test panel light using the detected normalizer panel light, as recited in Claim 66. Accordingly, Claim 66 is believed to be clearly allowable over Eden for at least those reasons as well.

Independent Claims 71 and 72 are apparatus and method claims, respectively, corresponding to computer-readable medium Claim 66, and are believed to be patentable for at least the same reasons as discussed above in connection with Claim 66.

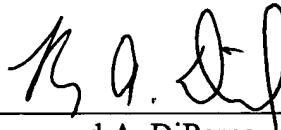
The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional

aspect of the invention, however, the individual consideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. A. DiPerna', is written over a horizontal line.

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